

(25)

GENERAL AND REVENUE SECRETARIAT.

1901-02.

~~191~~.

(Police)

File No. ²³~~106~~ of 1901-02.

Serial Nos. 1-4.

~~Papers Filed.~~ B.Month September 02.

SUBJECT.

House-breaking and theft by a
European lad Milton Richards of 14 years of

PREVIOUS REFERENCES.

LATER REFERENCES.

pol 58-19 (1-6)

Ch. 181-20 (1-39)

~~Continued~~
IfInverted.
K. Rangaswami

One Milton Prichard,
a European lad of 14 years,
but considered by the Justice of
the Peace to be even "younger than
his years in sense," was convicted
by Mr Justice Wright, J.P., of
(1) housebreaking with intent to
commit theft, under s. 452 I.P.C.,
and (2) theft in a building, under
s. 380 I.P.C. The Justice of the
Peace, however, released the
accused on probation of good
conduct under s. 562 of the ~~new~~ ^{old} Crim.
Procedure Code, Part V of
1898, which is the ~~code~~ ^{rule} applicable to
European ~~Prisoners~~ ^{Prisoners} subjects.
The District Judge, Bangalore, filed a petition before the District Judge
urging that the order was illegal,
and the latter recommends that
the records be transmitted to the
High Court of Madras for revision.

The illegality consists in the fact
that s. 562 of the Cr. Pro. Code applies
only where ~~to~~ a person is convicted for
the first time of "theft, theft in a
building, dishonest misappropriation,
cheating, or any other offence under
the I.P.C. punishable with not more
than two years' imprisonment," whereas
one of the offences of which the boy
Prichard has been convicted is
house-breaking, punishable with imprisonment
which may extend up to ten years.

Strictly speaking, therefore,
this is a case in which ~~for~~ ^{for} would

be justified in moving for a 2nd revision. But there is, of course, no obligation on it to do so and, perhaps, on a consideration of the ^{youth of the prisoner & other} circumstances of the case, it may not think ~~it~~ ^{the same} worth while.

Subd for order into a draft (in case it should be necessary) asking for the full Advocate's price.


£ 3.00

The Case is a clear one & I am not sure if a reference to the full Advocate is necessary. I am however doubtful if the Case deserves to be taken before the High Court, as the accused is a youngster of 14 years.

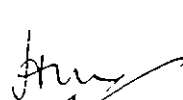
Submitted to the
Deputy - 

4/3/02

3640.
RD 4. 3.02

3899
14 years old
very young
asking for a
warrant not any
ordinary offence -
9 months in jail
had been the plan
by the High Court
of Madras - but
with no application
for any particular
sentence -

used
5. III. 02


7/3

Draft Subd
dtd 7/3/02

Office Note Continued

In accordance with the foregoing order, the records were sent to the F. A. Resident with a request that they may be transmitted to the High Court of Madras for moving that Court to revise the order of the justice of the ~~Peace~~ Peace. The Residency have now returned the records. It is observed that it is not clear that any good purpose would be served by a reference on the point from the Res to the High Court of Madras, as the off is of a very trivial nature as is apparent from the Records. ~~It~~ It is further stated that as the Calendar of

of

if all cases decided by
justices of the Peace
in Mysore are sub-
mitted to the High
Court immediately
after the final
order has been passed,
it is open to the High
Court of their own
motion to call for
the records of the case
should that Court
consider that the
irregularity of the
order is one which
requires correction.

Submitted for order

15/5/02
The Dewan's remark
recorded in the above
letter is :- "I do not quite
agree with this view. But
it is imperative to proceed
further."
The Mr Magte, who made
the reply, may therefore be
informed that though the
illegality of the order passed
by the Justice of

dt 0-5-02

- of the Dillace (Mr. W. H. Wright) appears beyond question, the Govt. do not consider it ~~expedient~~ ~~to~~ that this is a case in which it is expedient to take any further steps.

To Secy

15-5-02

The question is one of considerable importance in principle.

Has the Dtl Magte of Bangalore ~~power~~ ^{power} to exercise the Powers of a Dtl Magte in such cases? If so, he can send up the case to the High Court under S. 438. That such reference has to go through the Govt. & the Residency is ~~an~~ incidental to the existence of the High Court in Br. India; and neither this Govt. ~~nor~~ nor the Residency should (St. all speaking) ever

use any discretion
in withholding such
reference.

If the District Magis-
trate has no jurisdiction,
~~it~~ it seems to be neces-
sary that there should
be some other District
Magistrate who has power
to deal with ~~the case~~
Magistrates who exercise juris-
diction over Europeans.

Under the For. Juris-
diction Act, all Justices of the
Peace have powers of
1st cl. Magistrates. The ^{note} ~~note~~
of the ~~For. Juris.~~ in Council
20 d. 7 Apr 1886 which is
issued with the Concur-
rence of the G. C. of India
in Council, ^{shows that} except for
inquiring into or try-
ing a charge, Magistrates in
districts have the same

Does not this
presuppose that any
Magistrate, has, under the
present laws, any power
of interference with the
District Magistrate's exercise of
his powers? I don't
know that a District
Magistrate has any control over
the actions of a Justice of the
Peace who can
solve the Magistrate's case.
I shall be glad if
the law on this subject
is quoted distinctly.

Powers as may be exercised by Magistrates out of Presidency Towns. ^{in Br. India.} This, I think, may fairly be held to include the revisionary and supervising Powers of the District Magistrate.

That the Honorable the Resident has utterly mistaken the nature of the Case, is plain from the observation that the accused who has been virtually let off with a warning (where he should have been punished) is so free to move the High Court himself.

The High Court is not expected anywhere

Is there not an act governing justices of Peace for all magistrates in Br. India & in the Magistrate's Courts of Peace?

Vide my letter below.
21.2.22

It was not to the interest of the accused who is let off to move the High Court to revise the ~~sentences~~ order.

27/8

Is not clear who is "pre"?

to be so particular in reading Calendars as to call up every doubtful case. The Code expressly vests the Dist^{ct} Magistrate with the function of watching that proper decisions are given in Criminal Cases. There seems to be no reason why this should be determined in this case.

~~But~~ I am not however certain that we can gain anything by proceeding further. But it would be a gain if we can get it declared, that when we or our Dist^{ct} Magistrates wish to move the High Court accg to the provisions of law, we should

5282—

So is the Govt.
in this case -
if we did not
want to seek the
medium of the
High Court we
should have
consulted some
counsel - The
Madras High
Court is not bound
when any
presentation is
made with a properly
constituted lawyer.

be free to do so, ~~and~~
without the Residency
(which is a non-
judicial ~~Tribunal~~
authority in this mat-
ter) disposing of the
matter accg to its own
judgment.

Submitted to the

Dewan - Am
29/5/1902

4682
2029.5.02

Shall be glad
if the question
is further considered
& a more lucid note submitted

Wm

8.VII.02

Recd 10/7/02

To The Asst Secretary
Jd Dept

12/7/02

Recd
Jm very busy
esp. now with the
L.C. etc. Please improve
a week hence - 12.7.02

Submitted

19/7/02

The appointment of Justices of the Peace is regulated by the following enactments of the British Indian Legislature :-

(1) Sections 22 to 25 of the Code of Criminal Procedure, Act No. 10 of 1898. [In reply to the Dewan's query therein, I beg to state that European Magistrates in the ~~of~~ ^{of} ~~Magistrate~~ in British India are not necessarily Justices of the Peace, unless they are either expressly appointed under ss. 22 & 23, or hold the office of ~~Session Judge~~ ^{or District Magistrate} (S. 25.)

X Even one who is not a European or Br. subject, if he holds these offices, is an ex officio J. P.

(2) Section 6 of the Foreign Jurisdiction and Extradition Act, 1879, -
- quoted in full below :-

"The Govt. Genl. in Council may appoint any European British subject, either by name or by virtue of his office, to be a Justice of the Peace in or for any such country or place; and every such Justice of the Peace shall have in proceedings against European British subjects, or persons accused of having committed offences conjointly with such subjects, all the powers conferred by the Code of Criminal Procedure, on Magistrates of the first class who are Justices of the Peace and European British subjects."

"The Govt. Genl. in Council may direct to what Court having jurisdiction over European British subjects any such Justice of the Peace is to commit for trial."

The point which has been raised in the present ^{case} ~~instance~~ is, whether the Dist. Magistrate of Bangalore or any other Dist. Magistrate is to be intrusted with the

jurisdiction to move the Madras High Court for a revision of the proceedings of a Justice of the Peace appointed under s. 6 of the District Jurisdiction Act.

From s. 12 of the ^{British Indian} Criminal Procedure Code, it is clear that all Magistrates ~~in a district~~ ^{other than} the District Magistrate are subordinate to the latter & inferior to him in rank. This is so, even if one of the former class is a Justice of the Peace; for all his proceedings are taken by him as a Magistrate, and his appointment as a J. of P. is merely intended to give him jurisdiction as a Magistrate which he would not otherwise have. (cf. the wording of s. 443: "No Magistrate, unless he is a Justice of the Peace, shall inquire into or try any charge...")

Consequently, a District Magistrate in British India can ~~under~~ under ss. 435 to 438 of Act V of 1898, take steps for the revision of the proceedings of a Magistrate who is a Justice of the Peace, inasmuch as the latter is "an inferior Criminal Court situated within the local limits of his jurisdiction."

The case, however, is ^{very} different as regards a Justice of the Peace like Mr. Hume Wright, who is

appointed ~~under~~ by the Govt of India
under Act ~~XXI~~ of 1879. The
law of procedure applicable to
his ^{proceedings} is the one in force in
British India^{*}; and this confers
no manner of jurisdiction ^{on}
any District Magistrate. He
only Court to which he is inferior
& subordinate is the High Court
of Madras to which he is required
to commit European ~~British~~ subjects
for trial; and this Court can,
under s. 439 of Act V of 1858, take
action "in the case of any proceeding
the record of which has been called for
by itself or which has been reported
for orders, or which otherwise
comes to its knowledge." ~~on~~

~~It is~~ It is under the words
indicated that any possible
action by this State can be
taken. Such action may take
the form of —

1) A revision petition. But as
the prosecutor is ^{technically} the King-Emperor^x
and not the Govt of Mysore, I doubt
if the High Court will recognize the
Mysore State as having a locus
standi as a party; and, in any
case, we cannot insist upon being
heard personally or by pleader
(S. 440 of the Cr. P. Code).

2) A letter to the High Court.
This would be opposed to the rules
regarding direct correspondence.

(X vide s. 8 of the same Act.)

x This is clear, as the law
applies applicable to the
of British India.

3) Indian through the humble
the President. This seems to be
the ~~only proper~~ ^{correct} cause to take;
and we took it in the case
under advancement.

As
21-7-02

The question is perplexing
viewed ~~and~~ ^{express} as one of law only.
But it seems to be neces-
sary that ^{this} Govt. should at
least have the power
of invoking the law, or
otherwise than by mere beti
tion to a non-judicial
authority. It may throw
some light on the matter
to consult the terms
of the Act delegating
certain powers to the
Police of Mysore &c.

(Please reply)
Hus.
- 17/8

Recd 20-8-02.
Put up with
at 20 d. 7-4-03
a complaint to Secy.
to Govt.

Copy put up
to
24/8/02

Clause ~~B~~ (b) of
Act No. 20 d. 7. Apr 1886
says that Magistrates

in Mysore may exercise with respect to European British subjects the same powers as may be exercised with respect to European for. subjects by Magistrates who are not justices of the Peace in British India beyond the limits of Presidency Towns. The jurisdiction that is withheld from the Mysore Magistrates is accord to Ch. a. the jurisdiction to enquire into or try a charge.

The question therefore is whether District Magistrates in British India have power to report a case to the High Court under S. 438 of the Criminal Procedure Code. Such ^{power} jurisdiction being nowhere taken away from the District Mag^{tes} (See Chap. XXXIV), they must be held to possess it in British India.

The above ~~note~~ being issued in accordance with the ~~and~~ decision of H.E. the Viceroy, gives the same power to a District Magistrate in Mysore. If this view is correct,

the District Magistrate of Bangalore had power to refer the case for the orders of the High Court under S. 438 of the Procedure Code.

The facts that the report was made through the Govt., and that we transmitted it through the Residency are not essential. The procedure was merely adopted as the High Court is ~~better~~ beyond the limits of Mysore. Neither the Govt. nor the Honble the Resident, had (I would submit with due deference) any authority to sit in judgment over the propriety of the Dist^t Magistrate's act, which should be left solely to the High Court of Madras to dispose of.

I am not however sure that
there is any practical use in fur-
thering this matter further. It
is submitted for final orders.

H. J. [Signature]
27/8/02

The Dewan
through the
2nd Councillor

H. J. [Signature]
27-8-02

No further action
seem necessary -

I have carefully read
the notes above, and
the laws quoted therein.
In my opinion - and
then I express not without
some diffidence - ~~the~~
a question of the Peace
Commission to not subordinate
to a District Magistrate
in Mysore. That being so
our District Magistrates
have no locus standi
in matters to do with
the question of the Peace.
[Signature]

Sd/- to the Dewan
[Signature] 1/9/02

30-8-02

1946
The more
over, prop-
rietary
were both
legal and
political diffi-
culties

[Signature]
6.18.02

1/9/02
[Signature]
to the
[Signature] 11-8-02

ADK 4000
3 7.02
5879.
Draft filed
[Signature] 9/9/02

Notification no 20 dated 7th April
1881

With reference to Regn I of 1886 intro-
-ducing into the Territories of Mysore
the Code of Criminal Procedure, Act
I of 1882 and in accordance with
the decision of H. E. the Viceroy
and Governor Genl of India in
Council, communicated in letter
no 482-1895 of the 4th March 1896
from the officiating Resident
in Mysore to the Dewan of
Mysore, His Highness the Maharaja
is pleased to notify that
until further orders:—

- (a) the expression 'jurisdiction'
in Section I of the Regulation
shall be held to mean jurisdiction
to enquire into or try a charge,
and
(b) that Police officers and Magists¹⁸⁸³
in Mysore may exercise with
respect

respect to European British
subjects the same powers as
may be exercised with respect
to European British Subjects by
Police officers and by Magistrates
who are not Justices of the
Peace, respectively, in places
in British India beyond the
limits of the Presidency Towns.

OFFICE OF THE
11238
28 FEB 1902
8/339
1901/02

ROM

The District Magistrate
Bangalore District

To The Secy to the

Govt of Mysore
Rev. Genl. Secy

Dated

Despatched

Received

General No.

S. No. 981

Enclosure

No. 516 and 517.

Forwards for transmission to
the High Court of Madras the
pleads in criminal case No. 7 of
907-02 on the file of the Court of
the Justice of the Peace and 1st Class
Magistrate for their orders.

Subd.
28.2.02

A draft calling for the opinion
of the Govt Advocate in
the matter is put up for
approval or the order.

1/3/02

SECTION 2
FILE No. 106 of 1901-02.
SERIAL No. 1

D No 981
D. 1 and records

Bangalore District

District Magistrate's Office

Bangalore 26th February 1902.

From,

M. S. Narayana Rao Esq.

District Magistrate
Bangalore District

To,

H. V. Rangaswamy Esq. M.A.

Secy to the Govt of Mysore
Rev: and Govt Secy.

Sir,

I have the honor to forward
for transmission to the High Court
Madras under, Section 438 of the Code of
Criminal Procedure, the records in criminal case

the Justice of the Peace and 1st class —
Magistrate, Bangalore, for their orders.

2. The Complainant in the case complained
to the City Police of Bangalore of house-
breaking and theft. Whereupon the
Police traced the guilt to one Milton
Priehard, a resident of Fat Bangalore and
placed ^{him} before Mr Hume Wright, Justice of
the Peace and 1st class Magistrate for trial.
The Magistrate took up the case on his file
and examined 2 witnesses for the prosecution
and charged the accused with the offences
of house-breaking and theft under

Sections 454 and 380 Indian Penal Code

but released him under Section 562 of a Criminal Procedure Code.

3. The offence of which the accused in this case was convicted does not come within the scope of Section 562 Criminal Procedure Code. As it is not simple theft but house-breaking and theft ^{and} punishable with imprisonment exceeding 2 years.

4. The petition filed before me by the Superintendent of Police, Bangalore, for revision of the order of the Magistrate is also enclosed for such orders as they may deem fit to pass in the matter.

I have the honor to be

Sir

Your most obedient servant

~~~~~

District Magistrate  
Bangalore District

Draft as per order of  
app't.

2

|            |                                  |
|------------|----------------------------------|
| SECTION    | Police                           |
| FILE NO.   | 23<br><del>706</del> of 1901-02. |
| SERIAL NO. | 2                                |

The First Assistant  
to the Revenue in  
Mysore,

Dated 15/3-02

No. 15260 D. 24 recd  
J. 1302  
Sir,

I presume this is  
the usual manner  
of transmitting this  
Recd. Hun

6/3  
This is the first instance  
within my recollection that  
the office. I believe two have been  
present within recent memory.

Draft submitted to  
the Dewan for  
approval. Hun

737  
21.3.02 11/3  
4017  
much delay

und  
12. III. 02  
Insert me  
14/3

In forwarding copy  
of letter no. D. 981 dated 26<sup>th</sup>  
February 1902, from the  
District Magistrate of  
Bangalore, as also  
the Records in original  
(to be obligingly returned  
when no longer required),  
in Criminal case no.  
7 of 1901-1902, on the  
file of the Justice  
of the Peace, Bangalore  
in which one Milla  
Bitchard, a European  
British Subject, was  
convicted by Mr. Hume  
Wright, Justice of the Peace.

of (1) house-breaking with  
intent to commit theft  
under Section 454, I.P.C.  
and (2) theft in a building  
under Sec. 380 I.P.C., but  
was however, released  
by the justice of the Peace  
in probation of good  
conduct under Sec. 562  
of the Criminal Procedure  
Code, Act V of 1898; I  
am directed to request  
~~that~~ the favour of  
your transmitting the  
records to the High  
Court of Madras for  
~~view to moving that~~  
Court to revise the  
orders of the justice  
of the Peace, which as  
stated by the District  
Magistrate, <sup>appears to be</sup> illegal.

~~I am to state that~~

The illegality consists  
in the fact that S. 562  
of the Criminal Procedure  
Code applies only ~~where~~  
where a person is convicted  
for the first time, of

under the provisions of  
S. 437 of the Code of  
Criminal Procedure,

theft, theft in a building,  
dishonest mis-appropriation,  
cheating, or any other  
offence under the I.P.C.  
punishable with not  
more than two years  
imprisonment; but  
one of the offences of  
which the accused <sup>Butler</sup>  
has been convicted is  
house-breaking, punish-  
-able with imprisonment  
which may extend to  
10 years.

I have etc

7-2-92

H. B.

Secretary

14432 J. 1731  
1901-2

From

FIRST ASSISTANT TO THE  
HON'BLE THE RESIDENT  
IN MYSORE

Po 1753

THE DEWAN OF MYSORE.

|          |                       |
|----------|-----------------------|
| SECTION  | <u>Police</u>         |
| FILE NO. | <u>File of 1901-5</u> |
| SERIAL   | <u>3</u>              |

Dated 5<sup>th</sup> May 1902

Despatched

Received

General No. 2559  
No.

Enclosure No.

Returning with Varnar  
the record in Criminal  
Case No. 7 of 1901-5  
on the file of Mr. H. M.  
Wright, Justice of the  
Peace Bangalore.

Accused - Prichard

Subd with office.  
Note in continuation  
15/5/02

References to be marked.

No. 2559

FROM

C. L. S. RUSSELL Esq., I. C. S.,

FIRST ASSISTANT TO THE RESIDENT IN MYSORE.

To

The Dewan of Mysore.

SECTION Police

FILE No. 100 of 1901-02

SERIAL No. 3

Date: Bangalore, 5 May 1902.

SIR,

I am directed to acknowledge the receipt

of your office letter No. 15260/J.1302, dated the 15th March

1902, forwarding for transmission to the High Court of

Madras the record in criminal case No. 7 of 1901-1902, on

the file of Mr. Hume Wright, Justice of the Peace, Banga-

lore, with a view to the illegal order passed therein

being revised.

In reply, I am to say that the illegality

of the order passed by the Justice of the Peace in the

above case appears beyond question. It is not clear, how-

ever, that any good purpose would be served by a reference

on the point from the Resident to the High Court in Madras.

If the accused party considers himself aggrieved by the

order which has been passed, it is open to him himself to

I don't  
quite agree  
with this  
view. And  
it is unwise  
to  
proceed further  
with  
it.

8.1.02  
I have seen this with  
all the papers please.  
7/5

move in the matter. From the point of view of police administration, I am to state that from a perusal of the record it appears that the offence committed was, in view of the circumstances, of a very trivial nature and that it is undesirable that the Darbar should move to obtain a commutation of the order passed into one carrying a substantive penalty of any kind. Indeed from the argument of the Justice

"He (the accused) does not seem of the Peace, set forth to have been actuated by a desire of gain to himself and his in the passage of his acts, though criminal, were more judgment reproduced in the result of boyish wildness than the margin, it is not of an intention to commit an offence"

*quite* clear why the accused

was convicted at all.

3. I am further to say that it is understood that calendars of all cases decided by Justices of the Peace in Mysore are submitted to the High Court in Madras immediately after the final order has been passed. Should that Court consider that the irregularity of the order is one which requires correction, it is open to them of their own motion to call for the records of the case.

4. The record of the case referred to above and the petition for revision together with the copy of the judgment attached thereto, received with the letter under

reply,

reply, are herewith returned.

I have the honour to be,

Sir,

Your most obedient servant,

*E. H. J. 57512*  
For First Assistant Resident.  
(26)

To,

|            |                      |
|------------|----------------------|
| SECTION    | <u>Police</u>        |
| File No.   | <u>23 of 1901-02</u> |
| SERIAL No. | <u>4</u>             |

The District Magistrate,  
Bangalore

Dated 19-9-02.

No. 364 Vol. 24 Recd.  
J. 306

The District Magistrate,  
letter No. D. 981 dated 26<sup>th</sup>  
February 1902, forwarding  
for transmission to the  
High Court of Madras,  
the records in Criminal  
case No. 7 of 1901-02  
on the file of the Court  
of the Justice of the Peace  
and 1<sup>st</sup> class Magistrate,  
Bangalore.

Has the honour  
to return herewith, the  
record of the case  
referred to above and  
the petition for  
revision

revision. Together with  
Copy of the judgment  
attached thereto, and  
to state that Govt  
considers it inexpedient  
to proceed further in  
the case.

By order

For  
For Secretary  
9/9/02